

**FILED**

MAY 18 2006

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,  
Plaintiff,

NO. CIV. S-04-2467 LKK/JFM

v.

**PRETRIAL CONFERENCE ORDER**  
**[FINAL]**

CITY OF SACRAMENTO,  
Defendant.

Pursuant to court order, a Pretrial Conference was held in Chambers on March 6, 2006. JILL TELFER appeared as counsel for plaintiff; DAVID WOMACK appeared as counsel for defendant. JILL TELFER and DAVID WOMACK are therefore designated as lead trial counsel. On March 30, 2006, the court issued its tentative pretrial order. After consideration of the parties' objections and requests for augmentation, the court makes the following ORDERS:

**I. JURISDICTION/VENUE**

Jurisdiction is predicated upon 28 U.S.C. § 1331 and plaintiff makes a claim under state law. At present, defendant disputes that

1 claim. Defendant shall bring on a motion to dismiss same not later  
2 than twenty (20) days from the date of pretrial. Plaintiff shall  
3 respond within ten (10) days thereafter. Defendant may close  
4 within five (5) days thereafter. The matter will be heard on April  
5 24, 2006 at 10:00 a.m. in Courtroom No. 4. Venue is proper.

6 **II. JURY/NON-JURY**

7 Plaintiff has timely demanded a jury trial and this matter  
8 will be tried to a jury.

9 **III. UNDISPUTED FACTS**

10 1. Plaintiff, Michael Asberry, was hired on September 3,  
11 1992, and worked for the City of Sacramento ("City") as a garbage  
12 collector.

13 2. Beginning in February 1996, plaintiff worked as a  
14 Sanitation Worker II classification for the City in the Solid Waste  
15 Division.

16 3. Edison Hicks was the superintendent of the Solid Waste  
17 Division.

18 4. Plaintiff suffered from several on-the-job injuries and  
19 filed for worker's compensation claims as a result.

20 5. Plaintiff filed a disability discrimination claim against  
21 the City with the Equal Employment Opportunity Commission on or  
22 about December 3, 1999.

23 6. On or about December 21, 2001, plaintiff filed a civil  
24 lawsuit alleging discrimination and retaliation.

25 7. The trial in the lawsuit began on December 4, 2003 and  
26 ended on December 17, 2003.

1       8. On December 15, 2003, the City provided plaintiff a notice  
2 of intent to terminate.

3       9. On January 23, 2004, the City notified plaintiff that his  
4 employment with the City would be terminated effective January 26,  
5 2004.

6       10. Plaintiff was terminated on January 26, 2004.

7                   **IV. DISPUTED FACTUAL ISSUES**

8       1. Whether or not plaintiff Michael Asberry 's termination  
9 was motivated by his protected activity including his  
10 administrative charges of disability discrimination, his civil  
11 lawsuit and the jury's verdict on his behalf.

12       2. Whether or not the apparent success of his trial against  
13 defendant motivated its termination of him.

14       3. Whether or not the Equal Employment Opportunity  
15 Commission determined that defendant regarded Michael Asberry as  
16 disabled and had discriminated against him as a result.

17       4. Whether or not on or about March 24, 2000, plaintiff  
18 Michael Asberry returned to his position as a Sanitation Worker II  
19 for defendant.

20       5. Whether or not on December 17, 2003, the jury found the  
21 defendant discriminated against Michael Asberry because of his  
22 disability and/or perceived disability.

23       6. Whether or not other employees who failed to list their  
24 criminal records on their application(s) were terminated by  
25 defendant.

26       ////

1           7.     Whether or not Deion Mays, Joel Castenada, Mark Binion,  
2 Lee Bajet, Herman Littleton, Olivia Jiminez, and Clyde Marshall  
3 were similarly situated to plaintiff.

4           8.     Whether or not the defendant first learned of plaintiff's  
5 felony convictions from 1978 and 1979 on or about November 5, 2003.

6           9.     Whether or not defendant, including its supervisors and  
7 managers, were appraised of plaintiff's criminal convictions when  
8 he applied for promotions.

9           10.    Whether or not the decision to terminate plaintiff came  
10 from the City Managers Office and/or the City Attorney's Office.

11          11.    Whether or not plaintiff had a better employment record  
12 versus those who were similarly situated to him, including Deion  
13 Mays, Mark Binion, Clyde Marshall, Lee Bajet, and Joel Castenada.

14          12.    Whether or not Mark Binion and LeeBajet created more of  
15 a security risk to the public and their co-workers, including their  
16 propensity for violence, versus plaintiff.

17          13.    Whether or not Angela Casagrande provided inaccurate  
18 information in her declaration submitted to the Court in the case  
19 of Asberry v. the City of Sacramento, Case No. CIV S-01-2343 LKK/  
20 PAN, dated November 13, 2003.

21          14.    Whether or not the worker's compensation unit was aware  
22 of Michael Asberry's criminal record prior to November 5, 2003.

23          15.    Whether or not the Labor Relation's Office was aware of  
24 Michael Asberry's criminal record prior to November 5, 2003.

25          16.    Whether or not Mark Binion, Deion Mays, Clyde Marshall,  
26 and/or Lee Bajet provided false information during the fact finding

1 investigations.

2 17. Whether or not the City of Sacramento investigated any  
3 of the other employees of the defendant mentioned in John Irish's  
4 85 page letter.

5 18. Whether or not the City of Sacramento, specifically the  
6 City Attorney's Office, Labor Relations, and the Solid Waste  
7 Manager decided to take no action against Lee Bajet after learning  
8 he falsified his employment applications by failing to list his  
9 felonies.

10 19. Whether or not Deion Mays was disciplined for falsifying  
11 his application by failing to list his felonies.

12 20. Whether or not Joel Castaneda informed defendant of his  
13 criminal conviction when applying for a promotion.

14 21. Whether or not Michael Asberry was the first employee of  
15 the defendant outside of the Police Department to prevail against  
16 the defendant at trial.

17 22. Whether or not on August 2, 1978, Plaintiff was convicted  
18 on four (4) separate counts of felony robbery, as defined by  
19 Section 211 of the California Penal Code. Each count contained a  
20 special allegation and finding that Plaintiff used a firearm in the  
21 commission of the robbery.

22 23. Whether or not on August 7, 1979, Plaintiff was charged  
23 with first degree murder, as defined by Section 187 of the Penal  
24 Code, which also contained a special allegation that Plaintiff used  
25 a firearm in the commission of the crime.

26 ////

1       24. Whether or not on November 14, 1979, Plaintiff plead  
2 guilty to voluntary manslaughter, with an admission that Plaintiff  
3 used a firearm in the commission of the crime, in a plea bargain  
4 which settled the murder charge.

5       25. Whether or not on September 20, 1991, the City received  
6 Plaintiff's application for employment in the Sanitation Department  
7 as an Extra Board General Helper.

8       26. Whether or not in response to the question on Plaintiff's  
9 1991 employment application which asked "have you ever been  
10 convicted by a court of a crime?" - Plaintiff left blank the "Yes"  
11 or "No" boxes and wrote in the space provided "NA".

12       27. Whether or not on August 17, 1993, the City received  
13 Plaintiff's application for employment in the Sanitation Department  
14 as "Sanitation Worker I - Extra Board."

15       28. Whether or not in response to the question on Plaintiff's  
16 1993 employment application which asked "have you ever been  
17 convicted by a court of a crime?" - the "No" box was checked.

18       29. Whether or not on January 8, 1996, the City received  
19 Plaintiff's application for employment in the Sanitation Department  
20 as "Sanitation Worker II."

21       30. Whether or not in response to the question on Plaintiff's  
22 1996 employment application which asked "have you ever been  
23 convicted by a court of a crime?" - Plaintiff checked the "No" box.

24       31. Whether or not on December 15, 2003, the City notified  
25 Plaintiff of City's intent to terminate Plaintiff's employment  
26 because Plaintiff had felony convictions for robbery and

1 manslaughter which were not disclosed on his employment  
2 applications in 1991, 1993, and 1996.

3 32. Whether or not Plaintiff falsified his employment  
4 application submitted to the City in September 1991.

5 33. Whether or not Plaintiff falsified his employment  
6 application submitted to the City in August 1993.

7 34. Whether or not Plaintiff falsified his employment  
8 application submitted to the City in January 1996.

9 35. Whether or not Plaintiff informed Marion Anderson of his  
10 criminal record prior to August 1993.

11 36. Whether or not Plaintiff informed Joe Graves of his  
12 criminal record prior to August 1993.

13 37. Whether or not Plaintiff informed any management level  
14 employee within the Solid Waste Division of his felony convictions  
15 prior to November 2003.

16 38. Whether or not any management level employee within the  
17 Solid Waste Division was aware of Plaintiff's felony convictions  
18 prior to November 2003.

19 39. Whether or not any management level employee within the  
20 City's Labor Relations Office was aware of Plaintiff's felony  
21 convictions prior to November 2003.

22 40. Whether or not any management level employee within the  
23 City's Workers' Compensation Unit was aware of Plaintiff's felony  
24 convictions prior to November 2003.

25 41. Whether or not any management level employee within the  
26 City Attorney's Office was aware of Plaintiff's felony convictions

1 prior to November 2003.

2 42. Whether or not Plaintiff was dishonest during his fact  
3 finding interview in November 2003.

4 43. Whether or not Plaintiff's failure to disclose his  
5 criminal convictions on his employment applications constituted a  
6 violation of a valid work rule.

7 44. Whether or not Plaintiff's termination was appropriate  
8 considering the work rule violated.

9 45. Whether or not Plaintiff was the subject of disparate  
10 treatment in light of the discipline imposed on Mark Binion.

11 46. Whether or not Plaintiff was the subject of disparate  
12 treatment in light of the discipline imposed on Lee Bajet.

13 47. Whether or not Plaintiff was the subject of disparate  
14 treatment in light of the discipline imposed on Deion Mays.

15 48. Whether or not Plaintiff was the subject of disparate  
16 treatment in light of the discipline imposed on Clyde Marshall.

17 **V. DISPUTED EVIDENTIARY ISSUES**

18 The parties have filed their motions in limine. The briefing  
19 schedule is set forth in a minute order filed March 30, 2006. The  
20 court will take up the motions on the first day of trial.

21 The parties will not be permitted to bring motions in limine  
22 relative to any evidentiary issues not listed in the final pretrial  
23 order absent a showing that the issue was not reasonably  
24 foreseeable at the time of the pretrial order.

25 **VI. RELIEF SOUGHT**

26 Plaintiff seeks the following:



- 1 a. Compensatory damages, including back pay;
- 2 b. Pain and suffering damages; and
- 3 c. An award of reasonable attorneys' fees and costs.

4 Defendant seeks the following:

- 5 a. Judgment in its favor; and
- 6 b. An award of reasonable attorneys' fees and costs.

7 **VII. POINTS OF LAW**

8 Trial briefs shall be filed with the court no later than  
9 fourteen (14) days prior to the date of trial in accordance with  
10 Local Rule 16-285. The parties shall brief the following points  
11 of law in their trial briefs:

12 a. The elements, standards, and burden of proof relative to  
13 a claim for retaliation under 42 U.S.C. § 1983 under the facts and  
14 circumstances of this case;

15 b. The elements, standards, and burden of proof relative to  
16 a claim for retaliation under the Americans with Disabilities Act  
17 under the facts and circumstances of this case.

18 c. The elements, standards, and burden of proof relative to  
19 a claim for retaliation under the Fair Employment and Housing Act  
20 under the facts and circumstances of this case, assuming that that  
21 cause of action remains subsequent to hearing on the motion to  
22 dismiss.

23 ANY CAUSES OF ACTION OR AFFIRMATIVE DEFENSES NOT EXPLICITLY  
24 ASSERTED IN THE PRETRIAL ORDER UNDER POINTS OF LAW AT THE TIME IT  
25 BECOMES FINAL ARE DISMISSED, AND DEEMED WAIVED.

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1 VIII. ABANDONED ISSUES

2 Plaintiff abandoned his claim for disability discrimination  
3 on or about November 8, 2005.

4 IX. WITNESSES

5 Plaintiff anticipates calling the following witnesses: See  
6 Attachment "A."

7 Defendant anticipates calling the following witnesses: See  
8 Attachment "B."

9 Each party may call a witness designated by the other.

10 A. No other witnesses will be permitted to testify unless:

11 (1) The party offering the witness demonstrates that the  
12 witness is for the purpose of rebutting evidence which could not  
13 be reasonably anticipated at the Pretrial Conference, or

14 (2) The witness was discovered after the Pretrial  
15 Conference and the proffering party makes the showing required in  
16 "B" below.

17 B. Upon the post-Pretrial discovery of witnesses, the  
18 attorney shall promptly inform the court and opposing parties of  
19 the existence of the unlisted witnesses so that the court may  
20 consider at trial whether the witnesses shall be permitted to  
21 testify. The evidence will not be permitted unless:

22 (1) The witnesses could not reasonably have been  
23 discovered prior to Pretrial;

24 (2) The court and opposing counsel were promptly  
25 notified upon discovery of the witnesses;

26 ////

1 (3) If time permitted, counsel proffered the witnesses  
2 for deposition;

3 (4) If time did not permit, a reasonable summary of the  
4 witnesses' testimony was provided opposing counsel.

5 **X. EXHIBITS, SCHEDULES AND SUMMARIES**

6 Pursuant to the court's order dated May 16, 2006, the court  
7 will address the parties' objections to exhibits on June 6, 2006  
8 at 1:30 p.m. The final pretrial order will be amended accordingly.

9 The attorney for each party is directed to appear before and  
10 present an original and one (1) copy of said exhibit to Ana Rivas,  
11 Deputy Courtroom Clerk, not later than 10:30 a.m. on the date set  
12 for trial. All exhibits shall be submitted to the court in  
13 binders. Plaintiff's exhibits shall be listed numerically.  
14 Defendant's exhibits shall be listed alphabetically. The parties  
15 shall use the standard exhibit stickers provided by the court:  
16 pink for plaintiff and blue for defendant.

17 **XI. DISCOVERY DOCUMENTS**

18 Plaintiff will utilize the deposition transcripts of Defendant  
19 employee witnesses. Plaintiff will use Defendant's responses to  
20 Plaintiff's Request for Admissions, Set 1 and 2, date June 13,  
21 2005 and September 23, 2005, respectively, and Defendants responses  
22 to Plaintiff's Special Interrogatories, Set 3 and 4 attached.

23 1. Defendants' Response to Plaintiff's Request for  
24 Admissions, Set Two Request for Admission No. 8:

25 There are employees with the City of Sacramento Sanitation  
26 Department that have a criminal record who remain employed with the

1 City of Sacramento.

2 Response to Request for Admission No. 8:

3 Defendant objects to the request as vague, ambiguous, and over  
4 broad insofar as the use of the term criminal record is used. The  
5 request is further objected to as duplicative and on the basis that  
6 it seeks information invasive of the constitutional, statutory, and  
7 common law privacy rights of third parties. Without waiving said  
8 objections; Defendant admits this request.

9 Request for Admission No. 5:

10 There are other employees working for the City of Sacramento  
11 Sanitation Department that have a criminal record and have not been  
12 terminated.

13 Response to Request for Admission No. 5:

14 Defendant objects to the request as vague, ambiguous, and over  
15 broad insofar as the use of the term criminal record is used. The  
16 request is further objected to on the basis that it seeks  
17 information invasive of the constitutional, statutory, and common  
18 law privacy rights of third parties. Without waiving said  
19 objections, Defendant admits this request.

20 Request for Admission No. 6:

21 There are employees with the City of Sacramento that have a  
22 criminal record who remain employed with the City of Sacramento.

23 Response to Request for Admission No. 6:

24 Defendant objects to the request as vague, ambiguous, and over  
25 broad insofar as the use of the term criminal record is used. The  
26 request is further objected to as grossly over broad, harassing,

1 and burdensome insofar as it relates to any employees not employed  
2 within the City's Sanitation Department. The request is also  
3 objected to on the basis that it seeks information invasive of the  
4 constitutional, statutory, and common law privacy rights of third  
5 parties. Without waiving said objections, Defendant admits this  
6 request.

7 Request for Admission No. 7:

8 The City of Sacramento is aware of employees that have put  
9 inaccurate information on their employment application who have not  
10 been terminated.

11 Response to Request for Admission No. 7:

12 Defendant objects to the request as vague, ambiguous, and over  
13 broad insofar as the use of the term inaccurate information is  
14 used. The request is further objected to as grossly over broad,  
15 harassing, and burdensome insofar as it relates to any employees  
16 not employed within the City's Sanitation Department. The request  
17 is also objected to on the basis that it seeks information invasive  
18 of the constitutional, statutory, and common law.

19 2. Defendant's Response to Request for Admissions, Set Two-No  
20 11;

21 Q: Defendant objects to the request as vague, ambiguous, and  
22 over broad. Without waiving said objections, denied.

23 A: Defendant objects to the request as vague, ambiguous, and  
24 over broad. Without waiving said objections, and limiting the  
25 request to behavior reported to or observed by Solid Waste Division  
26 management, admitted.

1        3. Defendant's Responses to Special Interrogatories, Set  
2 Three:

3 Special Interrogatory No. 7:

4        Please identify the names of each and every supervisor that  
5 interviewed plaintiff in 1991 for the position of Sanitation  
6 Helper?

7 Response to Special Interrogatory No. 7:

8        Defendant objects to this interrogatory for lack of foundation  
9 insofar as the question assumes a supervisor interviewed Plaintiff  
10 for this position. Without waiving said objection, Defendant is  
11 still in the process of determining who, if anyone, interviewed  
12 Plaintiff in 1991 for the position of Sanitation Helper. Defendant  
13 reserves its right to amend this response upon discovery of new  
14 information.

15 Special Interrogatory No. 8:

16        Please identify the names of each and every supervisor that  
17 interviewed plaintiff in 1993 for the position of Sanitation Worker  
18 1, Extra Board?

19 Response to Special Interrogatory No. 8:

20 Defendant' objects to this interrogatory for lack of foundation  
21 insofar as the question assumes a. supervisor interviewed Plaintiff  
22 for this position. Without waiving said objection, Defendant is  
23 still in the process of determining who, if anyone, interviewed  
24 Plaintiff in 1993for the position of Sanitation Worker 1, Extra  
25 Board. Defendant reserves its right to amend this response upon  
26 discovery of new information.

1 Special Interrogatory No. 9:

2 Please identify the names of each and every supervisor that  
3 interviewed plaintiff in 1996 for the position of Sanitation Worker  
4 I?

5 Response to Special Interrogatory No. 9:

6 Defendant objects to this interrogatory for lack of foundation  
7 insofar as the question assumes a supervisor interviewed Plaintiff  
8 for this position. Without waiving said objection, Defendant does  
9 not believe Plaintiff was interviewed in 1996 for the position of  
10 Sanitation Worker I. Defendant reserves its right to amend this  
11 response upon discovery of new information privacy rights of third  
12 parties. Without waiving said objections, Defendant admits this  
13 request.

14 4. Defendants' Response to Plaintiff's Special  
15 Interrogatories, Set Four  
16 Special Interrogatory No. 13:

17 Please identify all sources of information regarding how the  
18 City of Sacramento learned of Clyde Marshall's criminal  
19 convictions.

20 Response to Special Interrogatory No. 13:

21 Defendant objects to this interrogatory on the grounds that  
22 the question is vague, ambiguous, and over broad. Without waiving  
23 said objections, Defendant responds as follows: Clyde Marshall.

24 Special Interrogatory No. 14:

25 Please provide any and all facts regarding the circumstances  
26 as how the sources identified above provided this information to

1 defendant including date of communication, forms of communication,  
2 and the individuals who received this information from the source.

3 Response to Special Interrogatory No. 14:

4 Defendant objects to this interrogatory on the grounds that  
5 the question is compound, vague, ambiguous, and over broad. Without  
6 waiving said objections, Defendant responds as follows: Defendant  
7 believes that in 2000, Clyde Marshall's son was involved in some  
8 type of a police investigation and, as a result, it was discovered  
9 that the elder Marshall may have been convicted of a felony which  
10 required his compliance with California's criminal offender  
11 registration requirements. Defendant believes Marshall informed  
12 Defendant of his arrest and, as a result, Defendant discovered  
13 Marshall's previously undisclosed felony conviction which pre-dated  
14 his date of hire.

15 Special Interrogatory No. 15:

16 Please identify all sources of information regarding how the  
17 City of Sacramento learned of Mark Binion's criminal convictions.

18 Response to Special Interrogatory No. 15:

19 Defendant objects to this interrogatory on the grounds that  
20 the question is vague, ambiguous, and over broad. Without waiving  
21 said objections, Defendant responds as follows: Mark Binion and/or  
22 Sacramento County Sheriff Department.

23 Special Interrogatory No. 16:

24 Please provide any and all facts regarding the circumstances  
25 as how the sources identified above provided this information to  
26 defendant including date of communication, forms of communication,



1 and the individuals who received this information from the source.

2 Response to Special Interrogatory No. 16:

3 Defendant objects to this interrogatory on the grounds that  
4 the question is compound, vague, ambiguous, and over broad. Without  
5 waiving said objections, Defendant responds as follows: In or  
6 around June 1993, Binion is believed to have informed Defendant's  
7 then Solid Waste Manager Sara De Lange of his post-hire felony  
8 convictions. At or around that time, De Lange is believed to have  
9 approved of Binion's participation in a work furlough program  
10 related to a conviction in 1993. Later, sometime around July 2002,  
11 Defendant's Solid Waste Manager G. Harold Duffey was asked to  
12 approve of a work furlough program for Binion - this time in  
13 relation to a May 2002 misdemeanor conviction. Defendant is not  
14 sure whether it was informed of the 2002 conviction by Binion or  
15 by the Sacramento County Sheriff Department, Work Furlough Program.

16 Special Interrogatory No. 17:

17 Please identify all sources of information regarding how the  
18 City of Sacramento learned of Lee Bajet's criminal convictions.

19 Response to Special Interrogatory No. 17:

20 Defendant objects to this interrogatory on the grounds that  
21 the question is vague, ambiguous, and over broad. Without waiving  
22 said objections, Defendant responds as follows: Lee Bajet.

23 Special Interrogatory No. 18:

24 Please provide any and all facts regarding the circumstances  
25 as how the sources identified above provided this information to  
26 defendant including date of communication, forms of communication,

1 and the individuals who received this information from the source.

2 Response to Special Interrogatory No. 18:

3 Defendant objects to this interrogatory on the grounds that  
4 the question is compound, vague, ambiguous, and over broad. Without  
5 waiving said objections, Defendant responds as follows: In or  
6 around April 1993, Bajet is believed to have informed Defendant's  
7 then Solid Waste Manager Sara De Lange of his post-hire felony  
8 conviction. At or around that time, De Lange is believed to have  
9 approved of Bajet's participation in a work furlough program  
10 related to a conviction in 1993. Later, sometime in late 1997 or  
11 early 1998, Defendant apparently was again informed of Bajet's 1993  
12 conviction again during the course of a workers' compensation  
13 action. Defendant is not sure who informed it of Bajet's conviction  
14 in late 1997 or early 1998.

15 Special Interrogatory No. 19:

16 Please identify all sources of information regarding how the  
17 City of Sacramento learned of Deion May's criminal convictions.

18 Response to Special Interrogatory No. 19:

19 Defendant objects to this interrogatory on the grounds that  
20 the question is vague, ambiguous, and over broad. Without waiving  
21 said objections, Defendant responds as follows: Police Department,  
22 City of Sacramento.

23 Special Interrogatory No. 20:

24 Please provide any and all facts regarding the circumstances  
25 as how the sources identified above provided this information to  
26 defendant including date of communication, forms of communication,

1 and the individuals who received this information from the source.

2 Response to Special Interrogatory No. 20:

3 Defendant objects to this interrogatory on the grounds that  
4 the question is compound, vague, ambiguous, and over broad. Without  
5 waiving said objections, Defendant responds as follows: IN or  
6 around August 2003, during her review of an internal affairs  
7 investigation file in which Deion Mays happened to be a civilian  
8 witness, Defendant's Labor Relations Officer Lisa Hutchins  
9 discovered Mays received a felony conviction in 1993

10 Defendant does not anticipate the introduction of  
11 interrogatory answers or responses to request for admissions in  
12 their case-in-chief, except for impeachment or memory refreshment.

13 **XII. FURTHER DISCOVERY OR MOTIONS**

14 None.

15 **XIII. STIPULATIONS**

16 None, except as noted.

17 **XIV. AMENDMENTS/DISMISSALS**

18 None.

19 **XV. FURTHER TRIAL PREPARATION**

20 A. Counsel are directed to Local Rule 16-285 regarding the  
21 contents of and the time for filing trial briefs.

22 B. Counsel are informed that the court has prepared a set  
23 of standard jury instructions. In general, they cover all aspects  
24 of the trial except those relating to the specific claims of the  
25 complaint. Accordingly, counsel need not prepare instructions  
26 concerning matters within the scope of the prepared instructions.

1 A copy of the prepared instructions was emailed to the parties  
2 concurrently with the tentative Pretrial Order.

3 C. Counsel are further directed that their specific jury  
4 instructions shall be filed fourteen (14) calendar days prior to  
5 the date of trial. As to any instructions counsel desires to  
6 offer, they shall be prepared in accordance with Local Rule 51-  
7 163(b)(1) which provides:

8 "Two copies of the instructions shall be submitted. One  
9 copy shall be electronically filed as a .pdf document  
10 and shall contain each instruction on a separate page,  
11 numbered and identified as to the party presenting it.  
Each instruction shall cite the decision, statute,  
ordinance, regulation or other authority supporting the  
proposition stated in the instruction."

12 The second copy ("jury copy") shall be submitted by e-mail to  
13 lkkorders@caed.uscourts.gov.

14 In addition, counsel shall provide copies of proposed forms  
15 of verdict, including special verdict forms, at the time the  
16 proposed jury instructions are filed with the court.

17 D. It is the duty of counsel to ensure that any deposition  
18 which is to be used at trial has been filed with the Clerk of the  
19 Court. Counsel are cautioned that a failure to discharge this duty  
20 may result in the court precluding use of the deposition or  
21 imposition of such other sanctions as the court deems appropriate.

22 E. The parties are ordered to file with the court and  
23 exchange between themselves not later than one (1) week before the  
24 trial a statement designating portions of depositions intended to  
25 be offered or read into evidence (except for portions to be used  
26 only for impeachment or rebuttal).

1 F. The parties are ordered to file with the court and  
2 exchange between themselves not later than one (1) week before  
3 trial the portions of answers to interrogatories which the  
4 respective parties intend to offer or read into evidence at the  
5 trial (except portions to be used only for impeachment or  
6 rebuttal).

7 G. The court has extensive audiovisual equipment available.  
8 Any counsel contemplating its use shall contact the court's  
9 Telecommunications Manager, Andre Carrier, at (916) 930-4223, at  
10 least two weeks in advance of trial to receive the appropriate  
11 training.

12 **XVI. SETTLEMENT NEGOTIATIONS**

13 A Settlement Conference was held before the Honorable Frank  
14 C. Damrell, Jr.

15 **XVII. AGREED STATEMENTS**

16 None.

17 **XVIII. SEPARATE TRIAL OF ISSUES**

18 Except for the bifurcation heretofore ordered, none.

19 **XIX. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS**

20 None.

21 **XX. ATTORNEYS' FEES**

22 The matter of the award of attorneys' fees to prevailing  
23 parties pursuant to statute will be handled by motion in accordance  
24 with Local Rule 54-293.

25 **XXI. MISCELLANEOUS**

26 None.

1                   **XXII.   ESTIMATE OF TRIAL TIME/TRIAL DATE**

2           Trial by jury is **SET** for June 13, 2006, at 10:30 a.m., in  
3 Courtroom No. 4. The parties represent in good faith that the  
4 trial will take approximately five (5) days.

5           Counsel are to call Ana Rivas, Courtroom Deputy, at (916) 930-  
6 4133, one week prior to trial to ascertain status of trial date.

7                   **XXIII.   MODIFICATIONS TO PRETRIAL ORDER**

8           The parties are reminded that pursuant to Federal Rule of  
9 Civil Procedure 16(e), this order shall control the subsequent  
10 course of this action and shall be modified only to prevent  
11 manifest injustice.

12           IT IS SO ORDERED.

13           DATED: May 17, 2006.

14                                   /s/Lawrence K. Karlton  
15                                   LAWRENCE K. KARLTON  
16                                   SENIOR JUDGE  
17                                   UNITED STATES DISTRICT COURT  
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Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 27 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 17 of 20

JILL P. TELFER (State Bar No. 145450)  
LAW OFFICES OF JILL P. TELFER  
A Professional Corporation  
331 J. Street, Suite 200  
Sacramento, California 95814  
Telephone: (916) 446-1916  
Facsimile: (916) 446-1726  
email: [jiltelfer@yahoo.com](mailto:jiltelfer@yahoo.com)

Attorneys for Plaintiff  
MICHAEL ASBERRY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,

Plaintiff,

v.

CITY OF SACRAMENTO/SANITATION  
DEPARTMENT,

Defendants.

Case No. S-04-2467 LKK/PAN

PLAINTIFF'S WITNESS LIST

Date: June 6, 2006  
Time: 8:30 a.m.  
Courtroom: 4  
Judge: The Honorable Lawrence  
K. Karlton, Chief Judge

Plaintiff intends to offer the following witnesses at the trial in the above entitled matter:

1. Candy Ayers, 921 10<sup>th</sup> Street, Sacramento, CA 95814, (916) 433-4950
2. Leo Bajet- retired, address unknown at current time Pia Basudev, Local #39, 1620 N.  
Market Blvd., Sacramento, CA 95834, (916) 928-0399 Mark Binion, 921 10<sup>th</sup> Street,  
Sacramento, CA 95814, (916) 433-4950
3. Angela Casagrande, c/o David S. Womack, Deputy City Attorney, City of  
Sacramento, 980 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
4. Joel Castaneda, c/o David S. Womack, Deputy City Attorney, City of Sacramento,  
980 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
5. Joseph Cirillo, c/o David S. Womack, Deputy City Attorney, City of Sacramento, 980

Plaintiff's Witness List

ATTACHMENT "A"

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 28 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 18 of 20

- 1 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 2 6. Deco Contreras, c/o David S. Womack, Deputy City Attorney, City of Sacramento, 980
- 3 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 4 7. Steve Grouch, Local #39, 1620 N. Market Blvd., Sacramento, CA 95834
- 5 8. Harold Duffy, c/o David S. Womack, Deputy City Attorney, City of Sacramento, 980
- 6 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 7 9. Shawn Hadnot, c/o David S. Womack, Deputy City Attorney, City of Sacramento,
- 8 980 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 9 10. Edison Hicks, 921 10<sup>th</sup> Street, Sacramento, CA 95814
- 10 11. Lisa Hutchins, c/o David S. Womack, Deputy City Attorney, City of Sacramento, 980
- 11 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 12 12. Steve Itagaki, c/o David S. Womack, Deputy City Attorney, City of Sacramento, 980
- 13 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 14 13. Samuel L. Jackson, c/o David S. Womack, Deputy City Attorney, City of Sacramento,
- 15 980 Ninth St., Tenth Flr., Sacramento, CA 95814-2736
- 16 14. Rudy Juarez, 2812 Meadowview Road, Sacramento, CA 95832 Deion Mays, 10<sup>th</sup>
- 17 Street, Sacramento, CA 95814
- 18 15. Cheryl Ruffy, 921 10<sup>th</sup> Street, Sacramento, CA 95814
- 19 16. Reina Schwartz, 730 "T" St., Sacramento, CA 95814
- 20 17. Kathy Widing, Local #39, 1620 N. Market Blvd., Sacramento, CA 95834 (916) 928-
- 21 0399
- 22 21. Ken Nishimoto
- 23 c/o David S. Womack, Deputy City Attorney
- 24 City of Sacramento
- 25 915 "T" St., Rm. 4010
- 26 Sacramento, CA 95814-2604
- 27 22. Jackie Sanders,
- 28 c/o David S. Womack, Deputy City Attorney
- City of Sacramento
- 915 "T" St., Rm. 4010
- Sacramento, CA 95814-2604

Plaintiff's Witness List



Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 29 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 19 of 20

- 1 23. Olivia Jimenez,  
2 c/o David S. Wornack, Deputy City Attorney  
3 City of Sacramento  
4 915 "I" St., Rm. 4010  
5 Sacramento, CA 95814-2604
- 6 24. Edna Young,  
7 c/o David S. Wornack, Deputy City Attorney  
8 City of Sacramento  
9 915 "I" St., Rm. 4010  
10 Sacramento, CA 95814-2604
- 11 25. Elizabeth Trimm, 136 Estes Way, Sacramento, CA 95838
- 12 26. Rebecca Asberry,  
13 c/o Jill P. Telfer  
14 331 J Street, Suite 200  
15 Sacramento, CA 95814
- 16 27. Rodigo Gattula, 921 10<sup>th</sup> Street, Sacramento, CA 95814
- 17 28. Sara M. De Lange, 3609 Mission Ave., Suite B, Carmichael, CA 95608, (916) 973-  
18 8721.
- 19 29. Cesar Bursia, 921 10<sup>th</sup> Street, Sacramento, CA 95814
- 20 30. Lupe Monarch  
21 c/o David S. Wornack, Deputy City Attorney  
22 City of Sacramento  
23 915 "I" St., Rm. 4010  
24 Sacramento, CA 95814-2604
- 25 31. Clyde Marshall  
26 3330 Maple Street  
27 Sacramento, CA 95838  
28 916.923.6532
32. Ms. Collins  
c/o Law Offices of Jill P. Telfer  
331 "J" St., Ste. 200  
Sacramento, CA 95814
33. Chaplan Dan Thompson  
c/o Law Offices of Jill P. Telfer  
331 "J" St., Ste. 200  
Sacramento, CA 95814
34. Pastor Ineskar Hollins  
c/o Law Offices of Jill P. Telfer  
331 "J" St., Ste. 200  
Sacramento, CA 95814
35. Elmer Steps  
c/o Law Offices of Jill P. Telfer  
331 "J" St., Ste. 200

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 30 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 20 of 20

Sacramento, CA 95814

36. Doray Dunn  
All Of Us or None  
1540 Market Street, #490  
S.F., CA 94102  
(415)-255-7036

36. Linda Evans  
All Of Us or None  
1540 Market Street, #490  
S.F., CA 94102  
(415)-255-7036

37. Michael E. Alpert  
Little Hoover Commission  
925 L Street, Suite 805, Sacramento, California 95814  
(916) 445-2125 or (916) 322-7709

Plaintiff reserves the right to call any witness on defendant's list of witnesses.

DATED: February 20, 2006

LAW OFFICES OF JILL P. TELFER  
*A Professional Corporation*

  
JILL P. TELFER  
Attorney for Plaintiff  
MICHAEL ASHERRY

Plaintiff's Witness List

**DEFENDANT'S LIST OF PROPOSED TRIAL WITNESSES**

1. Asberry, Michael, 7198 Snowy Birch Way, Sacramento, California 95823
2. Asberry, Rebecca, 7198 Snowy Birch Way, Sacramento, California 95823
3. Ayers, Candy, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
4. Barnes, Richard, Ueltzen & Company, LLP, 3800 American River, Ste 150, Sacramento, California 95864
5. Binion, Mark, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
6. Brasswell, Otto, 6328 Leaf Avenue, Sacramento, CA 95831
7. Brownlee, Harold, Jr., City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
8. Burrell, Delbert, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
9. Castenada, Joel, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
10. Chedester, Jeff, c/o Sac Bee, 2100 Q Street, Sacramento, California, 95816
11. Contreras, Dee, City of Sacramento, Labor Relations Office, 915 I Street, Sacramento, California 95814
12. Duffey, Harold, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
13. Finkelman, Jay, Allant International University, 1000 S. Fremont Ave, Unit 6, Alhambra, California 91803
14. Fleming, Kenneth, City of Sacramento, Administration Office, 915 I Street, Sacramento, California 95814
15. Hadnot, Shawn, City of Sacramento, Labor Relations Office, 915 I Street, Sacramento, California 95814
16. Hicks, Edison, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
17. Hutchin, Lisa, City of Sacramento, Labor Relations Office, 915 I Street, Sacramento, California 95814
18. Jouzapatia, Elisabeth, c/o Sac Bee, 2100 Q Street, Sacramento, California, 95816
19. Khan, Dean, City of Sacramento, Solid Waste Division, 2812 Meadowview Road, Sacramento, California 95832
20. Mays, Deion, City of Sacramento, Solid Waste Division, 2812 Meadowview Road,

EXHIBIT

ATTACHMENT "B"

IES

- 1 Sacramento, California 95832
- 2 21. Nibbelink, Gary, Gary Nibbelink Assoc., P.O. Box 182138, Sacramento, California  
95816
- 3 22. Ruggles, Adam, c/o Matthew Ruggles, Esq., Littler Mendelson, 2520 Venture Oaks  
4 Way, Suite 390, Sacramento, CA 95833-3294
- 5 23. Sanders, Jackie, 2129 New Hampshire, Sacramento, California 95835
- 6 24. Velasquez, Patty, City of Sacramento, Solid Waste Division, 2812 Meadowview  
7 Road, Sacramento, California 95832
- 8 25. Woods, Steven, George Hills Company, 3017 Gold Canal Dr., Ste 400, Rancho  
Cordova, California 95670
- 9 26. Young, Edna, City of Sacramento, Worker's Compensation Unit, 915 I Street,  
10 Sacramento, California 95814

11 DATED: 6/27, 2006

EILEEN TEICHERT, City Attorney

12 

13 DAVID S. WOMACK  
14 Deputy City Attorney

15 Attorneys for Defendant,  
16 CITY OF SACRAMENTO

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Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 33 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 12 of 20

JILL P. TELFER (State Bar No. 145450)  
LAW OFFICES OF JILL P. TELFER  
A Professional Corporation  
331 J. Street, Suite 200  
Sacramento, California 95814  
Telephone: (916) 446-1916  
Facsimile: (916) 446-1726  
email: [jilltelfer@yahoo.com](mailto:jilltelfer@yahoo.com)

Attorneys for Plaintiff  
MICHAEL ASBERRY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,

Plaintiff,

v.

CITY OF SACRAMENTO, et al.

Defendants.

Case No. S-04-2467 LKK/PAN

PLAINTIFF'S EXHIBIT LIST

Date: June 6, 2006

Time: 8:30 a.m.

Courtroom: 4

Judge: The Honorable Lawrence K.  
Karlton, Chief Judge

Plaintiff intends to offer the following evidence at the trial in the above entitled matter:

**EXHIBIT LIST:**

1. Plaintiff's Equal Employment Complaint of discrimination dated December 3, 1999.
2. Determination by the EEOC the City of Sacramento discriminated against Michael Asberry
3. *Asberry v. City of Sacramento* Complaint for Damages, U.S.D.C., Eastern District of California, Case No. 01-2343
4. Jury Verdict of December 17, 2003, including the transcript of the hearing reading the verdict.
5. November 13, 2003 Memo to plaintiff placing him on Administrative Leave

Plaintiff's Exhibit List

ATTACHMENT "C"

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 34 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 13 of 20

- 1 6. December 15, 2003, Notice of Intent to be Terminate to Michael Asberry.
- 2 7. January 23, 2004, letter of termination to Michael Asberry.
- 3 8. Performance Evaluations for Michael Asberry from date of hire until August 1996.
- 4 9. Annual Performance Evaluation for Michael Asberry from August 1996 to August
- 5 1997
- 6 10. Performance Evaluation for Michael Asberry from August 1997 to August 1998
- 7 11. Annual Performance Evaluation for Michael Asberry from August 1998 to August
- 8 1999
- 9 12. Annual Performance Evaluation for Michael Asberry from August 1999 to August
- 10 2000.
- 11 13. Annual Performance Evaluation for Michael Asberry from August 2001 to August
- 12 2002.
- 13 14. Annual Performance Evaluation for Michael Asberry from 2002 to 2003
- 14 15. Personnel Action Change Forms for Michael Asberry during his employment with the
- 15 City of Sacramento, including salary information
- 16 16. Hiring Clearance documents for Asberry.
- 17 17. Discipline Detail for Michael Asberry
- 18 18. Wage information from subsequent employment for Michael Asberry
- 19 19. November 21, 2003 notes of interview of Michael Asberry
- 20 20. Declaration of Angela Casagrande dated November 13, 2003.
- 21 21. August 2, 2004 letter from Angela Casagrande to Daniel Boone
- 22 22. Letter of August 26, 2004 from Sean Hadnot
- 23 23. Notice of Asberry's Filing's of his Worker's Compensation Claims
- 24 24. February 9, 1998 letter to file from Jackie Sanders to Lee Bajet's file
- 25 25. Letters of John Irish
- 26 26. Exhibit "26" to the deposition of Joel Castanada, questions to ask during Skelly
- 27 Hearing/Investigation
- 28 27. Job Applications of Mark Binion

Plaintiff's Exhibit List

-2-

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 35 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 14 of 20

- 1 28. Conviction Records of Mark Binion
- 2 29. Letters of discipline for Mark Binion, including after the criminal conviction for
- 3 assaulting a citizen with a baseball bat while employed with the defendant.
- 4 30. October 28, 1999 letter from the City of Sacramento to Mark Binion
- 5 31. June 25, 2002 letter to Mark Binion from Edison Hicks
- 6 32. July 25, 2003 letter to Mark Binion from Edison Hicks
- 7 33. Fact Finding Investigations and documentation for Mark Binion from 2002-2003
- 8 34. August 4, 2003 letter to Mark Binion from Edison Hicks
- 9 35. September 24, 2003 letter to Mark Binion
- 10 36. Discipline log of Mark Binion
- 11 37. Performance evaluations for Mark Binion
- 12 38. Job Applications of Lee Bajet
- 13 39. Conviction Records for Lee Bajet
- 14 40. Discipline log of Lee Bajet
- 15 41. Letters of discipline for Lee Bajet
- 16 42. January 25, 2002 letter to Lee Bajet from Edison Hicks
- 17 40. April 9, 2002 letter from Lee Bajet to Edison Hicks
- 18 41. October 16, 2002 settlement agreement regarding discipline of Lee Bajet including
- 19 the October 4, 2004 letter to Lisa Hutchins
- 20 42. Investigation file of Lee Bajet for stalking, including the letters of complaint by
- 21 citizens of the defendant.
- 22 43. Performance evaluations of Lee Bajet
- 23 44. April 5, 1993 letter from Sara M. De Lange to the Sheriff's Work Furlough re: Lee
- 24 Bajet.
- 25 45. Job application of Deion Mays
- 26 46. Conviction records of Deion Mays
- 27 47. November 29, 2001 letter from Deion Mays to Edison Hicks
- 28 48. Discipline log for Deion Mays



Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 36 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2006 Page 15 of 20

- 1 49. Letters of discipline for Deion Mays
- 2 50. September 26, 2003 letter from Lisa Hutchins to Steve Crouch regarding settlement
- 3 agreement of Deion Mays
- 4 51. Performance Reviews for Deion Mays
- 5 51. Employment Applications of Joel Castanada
- 6 52. March 3, 2000 Application of Joel Castanada
- 7 53. Conviction Records for Joel Castanada
- 8 54. Documented counseling and disciplinary actions taken against Joel Castanada
- 9 Applications for Clyde Marshall
- 10 55. Discipline log for Clyde Marshall
- 11 56. Worker's Compensation Records for Clyde Marshall
- 12 57. FAR identifying Marshall went from an LOA to an unpaid leave of absence.
- 13 58. LOA Parr for Clyde Marshall from January 22, 2001 to May 5, 2001.
- 14 59. Performance Evaluations for Clyde Marshall
- 15 60. Disciplinary documentation of Clyde Marshall
- 16 61. Application filed for service pending disability retirement for Clyde Marshall
- 17 62. AR Change Form for Clyde Marshall identifying he has retired as of December 12,
- 18 12, 2002
- 19 63. Employment Application of the City of Sacramento from Herman Littleton
- 20 64. Employment Application of the City of Sacramento from Olivia Jimenez
- 21 65. Documented counseling and disciplinary actions taken against Olivia Jimenez
- 22 66. The Little Hoover Commission Report-2003, *Back to the Community: Safe and Sound*
- 23 *Parole Policies*
- 24 67. CDC statistics regarding the No. Of ex-prisoners in California unemployed.
- 25 68. Defendants' Response to Plaintiff's Request for Admissions, Set One.
- 26 69. Defendants' Response to Plaintiff's Request for Admissions, Set Two.
- 27 70. Defendants' Response to Plaintiff's Special Interrogatories, Set Three
- 28 71. Defendants' Response to Plaintiff's Special Interrogatories, Set Four



Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 37 of 45  
Case 2:04-cv-02467-LKK-PAN Document 85 Filed 02/20/2008 Page 16 of 20

1 72. Plaintiff's medical bills.

2 73. Employment Application of Terrance Davis.

3 (May request the Court for judicial notice of these statistics rather than producing the documentation.)

4 Plaintiff reserves the right to supplement this list.

5 DATED: February 20, 2006

LAW OFFICES OF JILL P. TELFER  
*A Professional Corporation*

8   
JILL P. TELFER  
Attorney for Plaintiff  
MICHAEL ASBERRY

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**DEFENDANT'S LIST OF PROPOSED TRIAL EXHIBITS**

- 1
- 2 Exhibit A Defendant's Motion to Augment Exhibit List and Add Additional Defenses,
- 3 filed on November 13, 2003, in *Asberry v. City of Sacramento*, et al., U.S.
- 4 District Court Eastern District of California, Case No. CIV S-01-2343.
- 5 Exhibit B Fresno County Superior Court records re: *People v. Asberry*, criminal case
- 6 number 34171/230383-2; including: Complaint dated May 18, 1978; Order
- 7 dated May 31, 1978; Judgment & Sentence dated August 31, 1978.
- 8 Exhibit C Fresno County Superior Court records re: *People v. Asberry*, criminal case
- 9 number 33954/228916-2; including: Complaint dated May 4, 1978; Order
- 10 dated May 17, 1978; Judgment & Sentence dated August 31, 1978.
- 11 Exhibit D Fresno County Superior Court records re: *People v. Asberry*, criminal case
- 12 number 41388/249740-2; including: Complaint dated August 7, 1979; Order
- 13 dated November 14, 1979; Abstract of Judgment dated May 5, 1982.
- 14 Exhibit E Fresno County Superior Court records re: *People v. Asberry*, criminal case
- 15 number 41388/249740-2; Reporter's Transcript of Felony Change of Plea on
- 16 November 14, 1979.
- 17 Exhibit F Fresno County Superior Court records re: *People v. Asberry*, criminal case
- 18 number 41388/249740-2; Reporter's Transcript of R.P.O. and Judgment on
- 19 December 21, 1979 and January 8, 1980.
- 20 Exhibit G City of Sacramento Employment Application, submitted by Asberry on
- 21 September 20, 1991.
- 22 Exhibit H City of Sacramento Employment Application, submitted by Asberry on August
- 23 17, 1993.
- 24 Exhibit I City of Sacramento Employment Application, submitted by Asberry on
- 25 January 8, 1996.
- 26 Exhibit J City of Sacramento Administrative Policy Instructions, re: Discipline
- 27 Procedures and Review Standards, effective date July 15, 2002.
- 28 Exhibit K Discipline Case Detail and Event Log re: Asberry's proposed termination

**EXHIBIT**

**ATTACHMENT "D"**

- 1 following City's discovery that Mr. Asberry was not truthful in his employment  
2 applications.
- 3 Exhibit L Rule 12 of the Rules and Regulations of the Civil Service Board.
- 4 Exhibit M Memorandum to Asberry from Edison Hicks, Superintendent, dated  
5 November 13, 2003, re: placement of Asberry on Administrative Leave.
- 6 Exhibit N Transcript of Interview of Asberry on November 21, 2003.
- 7 Exhibit O Letter of Intent to Terminate to Asberry, dated December 15, 2003.
- 8 Exhibit P Letter of Termination to Asberry, dated January 23, 2004.
- 9 Exhibit Q Handwritten statement by Asberry, dated December 23, 2003, re: suspected  
10 motives for retaliation.
- 11 Exhibit R Memorandum to Harold Duffey, Division Manager, from Kenneth Fleming,  
12 Equal Opportunity Manager, dated January 22, 2004, re: Asberry's EEOC  
13 discrimination claim.
- 14 Exhibit S Memorandum to Fleming from Duffey, dated January 30, 2004, re: Asberry's  
15 EEOC discrimination claim.
- 16 Exhibit T Letter to Edna Young from Steven Woods, dated April 25, 2000, re: public  
17 record check on Asberry.
- 18 Exhibit U Asberry's claims for workers' compensation benefits, dated 02/17/93;  
19 02/14/94; 07/04/94; 02/24/95; 04/07/95; 09/10/96; 02/10/97; 04/24/00;  
20 05/15/01; and 02/19/02.
- 21 Exhibit V Asberry's Performance Appraisal Report from 09/02/92 to 11/27/92.
- 22 Exhibit W Asberry's Performance Appraisal Report from 09/02/92 to 03/12/93.
- 23 Exhibit X Asberry's Performance Appraisal Report from 10/02/93 to 01/07/94.
- 24 Exhibit Y Asberry's Performance Appraisal Report from 10/02/93 to 04/01/94.
- 25 Exhibit Z Asberry's Performance Appraisal Report from 02/17/96 to 08/17/96.
- 26 Exhibit 2A Asberry's Performance Appraisal Report from 08/15/96 to 08/16/97.
- 27 Exhibit 2B Asberry's Performance Appraisal Report from 08/16/97 to 08/15/98.
- 28 Exhibit 2C Asberry's Performance Appraisal Report from 08/15/98 to 08/14/99.

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 40 of 45

Case 2:04-cv-02467-LKK-PAN Document 88-2 Filed 02/27/2006 Page 5 of 10

- 1 Exhibit 2D Asberry's Performance Appraisal Report from 08/14/00 to 08/12/00.
- 2 Exhibit 2E Asberry's Performance Appraisal Report from 08/12/01 to 08/12/02.
- 3 Exhibit 2F Asberry's Performance Appraisal Report from 08/12/02 to 08/12/03.
- 4 Exhibit 2G Asberry's Late Slips dated 04/28/00; 09/20/00; and 11/15/00.
- 5 Exhibit 2H Memorandum to Asberry from Dean Khan, dated 08/20/01, re: excessive use  
6 of sick leave.
- 7 Exhibit 2I Memorandum to Asberry from Hloke, dated 01/15/02, re: work schedule, and  
8 Lunch Notice dated 01/14/02.
- 9 Exhibit 2J Inter-office Memo from Dean Khan to Solid Waste Superintendent, dated  
10 08/13/01, re: Incident involving Asberry and Khan requiring documented  
11 counseling.
- 12 Exhibit 2K Asberry's Medstar Application dated 08/25/04
- 13 Exhibit 2L Asberry's Medstar employment agreement and procedures dated 08/31/04  
14 and handwritten note dated 08/28/04.
- 15 Exhibit 2M Asberry's Resume and Sac Bee Application dated 09/09/04.
- 16 Exhibit 2N Sac Bee memorandum, dated 10/15/04, re salary adjustments.
- 17 Exhibit 2O Sac Bee incident report, dated 12/07/04, re Asberry behavior problems.
- 18 Exhibit 2P Sac Bee email and incident report, dated 01/11/05, re Asberry behavior  
19 problems.
- 20 Exhibit 2Q Asberry's handwritten notes re Sac Bee incident on 01/11/05.
- 21 Exhibit 2R Sac Bee incident report, dated 06/15/05, re Asberry behavior problems.
- 22 Exhibit 2S Sac Bee letter of reprimand dated 06/15/05.
- 23 Exhibit 2T Sac Bee Termination form dated 06/17/04.
- 24 Exhibit 2U Sac Bee employee earnings report, dated 08/25/05.
- 25 Exhibit 2V Fresno Bee, 08/06/79, page B2, "Fresno, 23 dies during argument."
- 26 Exhibit 2W Fresno Bee, 08/07/79, page B3, "6 persons held after weekend rash of  
27 slayings" (2 parts).
- 28 Exhibit 2X Fresno Bee, 08/08/79, page B3, obituary of Lonie Ray Thomas.

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 41 of 45

Case 2:04-cv-02467-LKK-PAN Document 88-2 Filed 02/27/2006 Page 6 of 10

- 1 Exhibit 2Y California Penal Code § 1192.7(o)
- 2 Exhibit 2Z California Penal Code § 192(a)
- 3 Exhibit 3A Letter to Civil Service Board from Steve Crouch, Bus. Rep. Local 39, dated
- 4 01/26/04, re: Appeal of Termination of Asberry.
- 5 Exhibit 3B Letter to Steve Crouch from Geri Hamby, Civil Service Board Secretary,
- 6 dated 02/03/04, re: Appeal of Asberry.
- 7 Exhibit 3C Letter to Kenneth Silbert, Esq. from Matthew J. Gauger, Esq., dated
- 8 12/14/04, re: withdrawal of appeal of Asberry's termination.
- 9 Exhibit 3D Declaration of Asberry, dated 08/23/04, re: bankruptcy.
- 10 Exhibit 3E Email from Candy Ayers to Fran Gould, dated 05/30/01, re: Asberry's PAR.
- 11 Exhibit 3F Personnel Action Requests (PAR) for Asberry, dated 01/23/04; 03/28/00;
- 12 02/01/00; 02/23/96; 09/30/93; 08/24/92.
- 13 Exhibit 3G Letter to Gary Van Dorst, acting Solid Waste Manager, from Pia Baudev,
- 14 dated 02/22/00, with Reasonable Accommodation Request Form, dated
- 15 02/22/00.
- 16 Exhibit 3H City of Sacramento code §106, Vacancies in Certain Cases
- 17 Exhibit 3I City of Sacramento code §109, Employees Defined
- 18 Exhibit 3J Certificate of Death of Marion Anderson
- 19 Exhibit 3K Certificate of Death of Joe J. Graves
- 20 Exhibit 3L Deposition of Michael Asberry Volume I, dated October 30, 2002, Case
- 21 Number 01-2343 LKK JFM, Asberry v. City of Sacramento, et al.
- 22 Exhibit 3M Deposition of Michael Asberry Volume II, dated November 14, 2002, Case
- 23 Number 01-2343 LKK JFM, Asberry v. City of Sacramento, et al.
- 24 Exhibit 3N Time line and summary of events
- 25 Exhibit 3O Expert report of Jay M. Finkelman Ph.D., Industrial/Forensic Psychologist
- 26 Exhibit 3P Summary of qualifications and publications of Jay M. Finkelman Ph.D.
- 27 Exhibit 3Q Expert Report of Gary Nibbelink, Rehabilitation Counselor & Consultant
- 28 Exhibit 3R Summary of qualifications of Gary Nibbelink

Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 42 of 45

Case 2:04-cv-02467-LKK-PAN Document 88-2 Filed 02/27/2006 Page 7 of 10

- 1 Exhibit 3S Expert Report of Richard Barnes, CPA
- 2 Exhibit 3T Expert Report of Richard Barnes, CPA, Exhibit A
- 3 Exhibit 3U Expert Report of Richard Barnes, CPA, Exhibit B (updated to date of trial)
- 4 Exhibit 3V Expert Report of Richard Barnes, CPA, Exhibit C
- 5 Exhibit 3W Expert Report of Richard Barnes, CPA, Exhibit D
- 6 Exhibit 3X Expert Report of Richard Barnes, CPA, Exhibit E
- 7 Exhibit 3Y Civil Complaint, U.S.D.C. Eastern District Case No. 01-2343, Asberry v. City
- 8 of Sacramento, et al.
- 9 Exhibit 3Z Civil Complaint, U.S.D.C. Eastern District Case No. 04-2467, Asberry v. City
- 10 of Sacramento, et al.
- 11 Exhibit 4A Discipline Case Detail and Event Log re: Delon L. Mays, falsification of
- 12 employment application by failing to list conviction.
- 13 Exhibit 4B Delon Mays' employment application, dated 09/18/98
- 14 Exhibit 4C Delon Mays' employment application, dated 09/27/99
- 15 Exhibit 4D Memorandum to Delon Mays from Edison E. Hicks, dated 08/21/03, re: Mays'
- 16 placement on administrative leave.
- 17 Exhibit 4E Handwritten notes of Steve Crouch, dated 08/21/03, re: fact finding interview
- 18 of Delon Mays
- 19 Exhibit 4F Facsimile transmission from Solid Waste to Lisa, dated 08/27/03, re: Delon
- 20 Mays
- 21 Exhibit 4G Facsimile transmission from Solid Waste to Lisa, dated 08/29/03, re: Delon
- 22 Mays
- 23 Exhibit 4H Letter from Lisa Hutchin to Steve Crouch, dated 09/29/03, re: settlement
- 24 Agreement with Delon Mays
- 25 Exhibit 4I Memo to file from Jackie Sanders, dated 02/09/98 re: Lee Bajet felony
- 26 conviction
- 27 Exhibit 4J Lee Bajet's employment application, dated 08/31/92
- 28 Exhibit 4K Lee Bajet's employment application, dated 01/12/96

- 1 Exhibit 4L Letter to Sheriff's Work Furlough/home Detention Program from Sara De
- 2 Lange, dated 04/06/93, re: work furlough for Lee Bajet
- 3 Exhibit 4M Handwritten notes, dated 01/13/98, re: Lee Bajet's criminal conviction
- 4 Exhibit 4N Transcript of fact finding interview, dated 01/16/98, re: Lee Bajet
- 5 Exhibit 4O Handwritten notes, dated 01/16/98, re: Lee Bajet's criminal conviction
- 6 Exhibit 4P Discipline Case Detail and Event Log re: Mark Binion, 20 day suspension for
- 7 undisclosed conviction and misdemeanor conviction.
- 8 Exhibit 4Q Sheriff's Dept. Home Detention Program form re: Mark Binion
- 9 Exhibit 4R Sacramento Superior Court records re: People v. Mark Binion, Case No.
- 10 02F04516, filed 05/21/02
- 11 Exhibit 4S Sacramento Superior Court records re: People v. Mark Binion, Case No.
- 12 93F00388, filed 01/13/93
- 13 Exhibit 4T Binion's employment application, dated 07/21/94
- 14 Exhibit 4U Binion's employment application, dated 05/05/95
- 15 Exhibit 4V Binion's employment application, dated 10/03/95
- 16 Exhibit 4W Memorandum from Edison Hicks to Binion, dated 08/28/02, re: Binion's
- 17 placement on administrative leave
- 18 Exhibit 4X Summary of discipline imposed on Binion prior to 10/19/01
- 19 Exhibit 4Y Letter from Sara De Lange to Sacramento County Sheriff Department, Work
- 20 Furlough Program, dated 06/03/93, re: Binion's work furlough
- 21 Exhibit 4Z Transcript of fact finding interview of Binion, dated 09/17/02, re: criminal
- 22 conviction
- 23 Exhibit 5A Transcript of fact finding interview of Binion, dated 09/25/02, re: criminal
- 24 conviction
- 25 Exhibit 5B Letter of Intent to suspend Binion for 20 days, dated 08/04/03
- 26 Exhibit 5C Handwritten notes, dated 09/10/03, re: Binion, Skelly meeting
- 27 Exhibit 5D Letter of 20 day suspension to Binion, dated 09/24/03
- 28 Exhibit 5E Letter from Pia Basudev to Civil Service Board, dated 09/25/03, re: appeal of



- 1 Blinon's 20 day suspension
- 2 Exhibit 5F Arbitration Opinion and Award, dated 08/12/04, re: Blinon's appeal of his 20
- 3 day suspension
- 4 Exhibit 5G Memorandum from Edison Hicks to Clyde Marshall, dated 08/31/00, re:
- 5 placement of Marshall on administrative leave
- 6 Exhibit 5H Sacramento County Superior Court records re: *People v. Clyde Marshall*,
- 7 criminal case number 00F07183, filed 09/01/00
- 8 Exhibit 5I Summary of discipline imposed on Marshall, dated 08/31/00
- 9 Exhibit 5J Marshall's employment application, dated 01/04/86
- 10 Exhibit 5K Marshall's employment application, dated 01/08/86
- 11 Exhibit 5L Marshall's employment application, dated 09/23/86
- 12 Exhibit 5M Marshall's employment application, dated 04/17/87
- 13 Exhibit 5N Marshall's employment application, dated 09/12/89
- 14 Exhibit 5O Letter of intent to terminate Marshall, dated 12/12/00
- 15 Exhibit 5P Facsimile from Pia Basudev to Jacquelyn Sanders, dated 01/04/01, re:
- 16 postponement of Marshall's Skelly meeting
- 17 Exhibit 5Q Marshall's request for leave of absence, dated 01/22/01, with physician's
- 18 verification and PAR attachments
- 19 Exhibit 5R Letter to Marshall from Cheryl Rutty, dated 08/12/01, re: notice of delay in
- 20 determining liability for Workers' Compensation benefits
- 21 Exhibit 5S Letters to Marshall from Cheryl Rutty, re: denial of claims for workers'
- 22 compensation benefits, each dated 08/29/01
- 23 Exhibit 5T Email from Jacquelyn Sanders to Candy Ayers, dated 02/20/02, re: Marshall
- 24 and final termination letter
- 25 Exhibit 5U Letter to Marshall from Edison Hicks, dated 10/22/02, re: Skelly meeting on
- 26 proposed termination
- 27 Exhibit 5V Skelly meeting minutes, dated 11/08/02, re: Marshall termination
- 28 Exhibit 5W Marshall's work calendars for years 2000 through 2002



Case 2:04-cv-02467-LKK-PAN Document 91 Filed 03/30/2006 Page 45 of 45

Case 2:04-cv-02467-LKK-PAN Document 88-2 Filed 02/27/2006 Page 10 of 10

- 1 Exhibit 5X Memorandum from Lori Swinehart to Public Works Dept., dated 12/05/02, re:  
2 Marshall retirement  
3 Exhibit 5Y Fax cover sheet from Asberry dated 09/12/00; fax cover sheet dated  
4 10/23/00; handwritten note dated 10/23/00; EEOC invitation to settlement  
5 discussion dated 03/07/01; fax cover sheet dated 05/14/01  
6 Exhibit 5Z Payroll information re: Asberry  
7

8 DATED: 2/27, 2006

EILEEN TEICHERT, City Attorney

  
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11 DAVID S. WOMACK  
Deputy City Attorney

12 Attorneys for Defendant,  
13 CITY OF SACRAMENTO  
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